IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 34301 of 2006(H)

PETITIONER:

ASHA KUMARI. P.,
ADVOCATE, AJAY BHAVAN, PARAKODE P.O.,
ADOOR, (AT PRESENT RESIDING AT HOLY FAMILY
HOSPITAL QUARTERS, MUTHALAKODAM P.O.,
THODUPUZHA).

BY ADV. SMT.P.V.ASHA

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY CHIEF SECRETARY,
   GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   DEPARTMENT OF SOCIAL WELFARE,
   THIRUVANANTHAPURAM.

3. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   DEPARTMENT OF LOCAL SELF GOVERNMENT,
   THIRUVANANTHAPURAM.

4. **DIRECTOR OF URBAN AFFAIRS DEPARTMENT,**
   THIRUVANANTHAPURAM.

5. **DIRECTOR OF SPECIAL EMPLOYMENT**
   EXCHANGES, DIRECTORATE OF EMPLOYMENT AND
   TRAINING, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.34301/2006 H

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF CERTIFICATE ISSUED TO PETITIONER BY THE MEDICAL BOARD ON 9/11/05.**

EXT.P2: **COPY OF G.O.(P) 119/2005/SWD DTD. 6/08/05.**

EXT.P3: **COPY OF G.O.(MS) NO.27/06/SWD DTD. 22/05/06.**

EXT.P4: **COPY OF JUDGMENT DTD. 4/08/06 IN WP(C) NO.18284/06.**

EXT.P5: **COPY OF REPRESENTATION DTD. 9/11/06 OF PETITIONER BEFORE THE 1ST RESPONDENT.**

EXT.P6: **COPY OF ORDER NO.A2-45537/01/CE DTD. 17/05/04.**

/TRUE COPY/

KSS

K.K.DENESAN, J.

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WP(C).No.34301 OF 2006-H.

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Dated this the 14th day of March, 2007.

J U D G M E N T

The petitioner is an unemployed physically challenged woman. She possesses a post graduate degree. Ext.P1 certificate shows that she is suffering from congenital abnormalities in both the hands and feet and the disability assessed by the Medical Board is 40%. The petitioner wants her case to be considered for appointment in any of the Government departments against a suitable post, by implementing the provisions of the Central Act, namely, "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". The petitioner relies on Section 33 of the said Act in support of the reliefs prayed for.

2. It is not disputed that the State Government has got a statutory duty to set apart 3% of the

vacancies in every establishment in posts identified for the appointment of physically challenged persons. Since the Government did not show much interest in implementing the mandate of Section 33 of the aforesaid Act, a Division Bench of this Court in *Ratheesh Babu v. U.G.C.* (2004(3) KLT 158) directed the Government to evolve appropriate methodology for reserving adequate number of posts for appointing physically challenged persons against 3% reservation.

3. However, the Government was not keen in implementing the directions given in that judgment. In the result, the implementation of the statutory provisions has been delayed, inordinately.

4. The statement filed on behalf of the respondents would show that posts have been identified and a committee has been constituted to discuss about the further steps to be taken to prescribe the mode of selection and the method of appointment.

5. The above statement regarding the action

during the past few months would give some consolation for the petitioner and the similarly situated. The fact that vacancies have been identified in Class I and II posts for the appointment of physically challenged persons and orders have been issued for the constitution of a committee to prescribe the mode of selection and appointment will be of real help to the physically challenged persons only if actual appointments are made without further delay. This Court had occasion to take note of the lethargy on the part of the respondents and had to comment on the slow pace adopted in implementing a beneficial and social security legislation passed by the Parliament. In Ext.P3 judgment dated 4-8-2006, this Court was constrained to make the following observations:

> "I am strongly of the view that mere publication of an order in the nature of Ext.P7 will not by itself, result in real assistance to the physically handicapped persons and will not also amount to implementation of the provisions contained in the Central Act in its true sense. Unless proper machinery is provided and put into active operation, the guarantees provided by

> the Act of the Parliament ensuring 3% reservation to the physically challenged persons in public service in the State of Kerala will nothing but be a mirage. It is the statutory obligation of the Government to bring into operation the provisions of the Act and the Scheme and to take follow up action to achieve the object. The above observations have become necessary in the background of the indifference and lack of commitment shown by some of the appointing authorities to co-operate with the District Collectors in extending the benefit of the Central Act and the Scheme, to the blind, the deaf and the orthopaedically handicapped. Owing to such indifference and culpable omissions in the past, which amount to serious dereliction of duty on the part of the civil servants, substantial number of vacancies coming within the 3% quota have lapsed at the end of the year concerned. Hence this writ petition is disposed of directing the first respondent to formulate such devices which would provide effective relief for whose benefit Ext.P7 is made. Necessary machinery to enforce the provisions thereof, to identify persons who are genuinely in need of 3% reservation and prompt reporting of vacancies is absolutely necessary. Since the beneficiaries of Ext.P7 belong to a social group who come within the class known as the weaker section of the society, a time frame has to be fixed by the Government for the effective implementation of Ext.P7."

6. The petitioner will, naturally, be anxious to know what steps the Government have taken to implement

the provisions of the law passed by the Parliament giving hope to less fortunate sisters and brothers of our society.

7. Government Pleader submits that expeditious action will be taken to see that the benefit of Section 33 of the Central Act reaches the deserving physically challenged persons, as fast as possible.

8. Looking at the speed with which things have so far been done and the indifference of the official machinery clearly visible, it is doubtful whether the petitioner and similarly situated persons can nurture positive hopes in their mind. The intermittent hibernation has necessarily to come to an end. Something on war footing will have to be done by the Government. It has, therefore, become necessary to fix a time frame for completing the process and issue the following directions so that persons who deserve to be considered for appointment will be allowed to participate in the selection process and to get appointed.

9. (i) The Committee constituted by the Government as per order dated 22-5-2006 shall immediately convene a meeting to make recommendations about the mode of selection and the method of appointment to Class I and II posts. (ii) The meeting will have to be convened within one month from the date of receipt of a copy of this judgment. (iii) The recommendations of the Committee regarding the mode of selection and appointment shall be intimated within one week thereafter to the Government for consideration. (iv) The Government shall take up for consideration the report of the aforementioned Committee with the object of implementing Section 33 of the above Act and evolve a scheme which will contain appropriate provisions relating to the mode of selection and the method of appointment and for the effective implementation of the Act. The scheme shall be published within a maximum period of two months, thereafter. Consultation with the State Public Service Commission shall also be made in the meantime. The

respondent - Commission shall perform its role as urgently as possible, so that the mandate of the supreme law making body is complied with, by all concerned, within the time limit fixed herein.

The writ petition is disposed of with the above directions.

K.K.DENESAN, JUDGE.

kvs/-